

HOUSE BILL 271

By Mumpower

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 6; Title 63, Chapter 9 and Title 68, Chapter 11, Part 2, relative to office-based surgery.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 6, Part 2, is amended by adding the following new section:

63-6-239.

(a) For the purpose of this section, office-based surgery is defined as Level III surgery requiring a level of sedation beyond that defined in board rules for Level II surgery that is performed outside a hospital, an ambulatory surgical treatment center, or other medical facility licensed by the department of health. The board of medical examiners shall have the duty and responsibility to regulate the practice of office-based surgery, including the promulgation of rules and regulations necessary to promote patient health and safety in such practices.

(b) The board shall specifically identify in rules the parameters to be used in determining those Level III surgical procedures as well as those multiple procedures that may be performed in an office-based setting pursuant to the level of anesthesia involved as well as the age and risk classification criteria of the patients eligible for Level III office-based surgical procedures.

(c) Using rules established for ambulatory surgical treatment centers as guidelines, the board shall promulgate its own rules relative to infection control, life safety, patient rights, hazardous waste and equipment and supplies necessary to assure the safety of patients undergoing office-based surgery. Any provision in the ambulatory surgical treatment center (ASTC) rules addressing infection control, life safety, patient

rights, hazardous waste and equipment and supplies that is not adopted by the board will require a statement entered into the official minutes from the board justifying its decision.

(d) The board is authorized to enter into a memorandum of understanding, contract or other written arrangement with the department of health such that the department is:

(1) Required to provide a site survey of a physician's office that seeks to perform office-based surgery.

(A) A physician's office at which Level III surgeries are occurring as of the effective date of this bill shall submit both a request for a site survey on a form developed by the board and remit payment of the fee required by subsection (g) to the department within sixty (60) days of the effective date of this act. If such an office makes a timely filing in accordance with this provision, then such office may continue to be a site for Level III surgeries pending completion of a survey confirming compliance with board rules.

(B) Physician offices that are performing Level III surgeries as of the effective date of this act that fail to submit a request for a site survey or fail to submit payment to the department within sixty (60) days of the effective date of the bill shall immediately cease all Level III surgical procedures until such time as application is made, fee paid and a site survey completed.

(C) A physician that is not performing Level III office-based surgeries as of the effective date of this bill shall not perform any such

procedures until a form and payment is submitted and a site survey completed by the department;

(2) Authorized to initiate subsequent, unannounced site surveys during regular business hours as long as the physician continues to perform Level III surgeries but no more frequently than once every twelve (12) months; and

(3) Authorized to respond to any complaints made by patients or the public against a physician who performs Level III office-based surgery at the request of the office of investigations.

(e) The results of all site surveys shall be transmitted to the board which shall make a final determination authorizing the physician to perform Level III surgeries. Such information shall be shared on a routine basis with the board for licensing health care facilities.

(f) The results of all complaint investigations by department staff shall be transmitted to the board for resolution. However, all such information shall at all times be maintained as confidential and not available to the public except to the extent the provisions of Section 63-1-117(b) apply.

(g) Any physician that desires to perform office-based surgery shall pay to the department a fee in the same amount as the annual licensure fee of an ambulatory surgical treatment center, as defined in Section 68-11-201(3).

(h) A physician who performs office-based surgery shall insure that claims data is reported on the appropriate form to the commissioner of health. The data shall be submitted through a third party approved by the department of health for the purpose of editing the data according to rules and regulations established by the commissioner. The physician shall be responsible for the costs associated with processing of the data by the approved vendors. The claims data shall be reported at least quarterly to the

commissioner. No information shall be made available to the public by the commissioner that reasonably could be expected to reveal the identity of any patient. The claims data reported to the commissioner under this section are confidential and not available to the public until the commissioner processes and verifies such data. The commissioner shall prescribe conditions under which the processed and verified data are available to the public.

(i) Failure of a physician performing office-based surgery to abide by the provisions of this part or of Section 68-11-211 may be grounds for disciplinary action and/or termination of the rights of the physician to perform office-based surgery by the board of medical examiners.

(j) The board is authorized to promulgate public necessity rules that address any aspect of office-based surgery as deemed necessary.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 9, is amended by adding the following new section:

63-9-117.

(a) For the purpose of this section, office-based surgery is defined as Level III surgery requiring a level of sedation beyond that defined in board rules for Level II surgery that is performed outside a hospital, an ambulatory surgical treatment center, or other medical facility licensed by the department of health. The board of osteopathic examination shall have the duty and responsibility to regulate the practice of office-based surgery, including the promulgation of rules and regulations necessary to promote patient health and safety in such practices.

(b) The board shall specifically identify in rules the parameters to be used in determining those Level III surgical procedures as well as those multiple procedures that may be performed in an office-based setting pursuant to the level of anesthesia involved

as well as the age and risk classification criteria of the patients eligible for Level III office-based surgical procedures.

(c) Using rules established for ambulatory surgical treatment centers as guidelines, the board shall promulgate its own rules relative to infection control, life safety, patient rights, hazardous waste and equipment and supplies necessary to assure the safety of patients undergoing office-based surgery. Any provision in the ambulatory surgical treatment center (ASTC) rules addressing infection control, life safety, patient rights, hazardous waste and equipment and supplies that is not adopted by the board will require a statement entered into the official minutes from the board justifying its decision.

(d) The board is authorized to enter into a memorandum of understanding, contract or other written arrangement with the department of health such that the department is:

(1) Required to provide a site survey of a physician's office that seeks to perform office-based surgery.

(A) A physician's office at which Level III surgeries are occurring as of the effective date of this bill shall submit both a request for a site survey on a form developed by the board and remit payment of the fee required by subsection (g) to the department within sixty (60) days of the effective date of this act. If such an office makes a timely filing in accordance with this provision, then such office may continue to be a site for Level III surgeries pending completion of a survey confirming compliance with board rules.

(B) Physician offices that are performing Level III surgeries as of the effective date of this act that fail to submit a request for a site survey

or fail to submit payment to the department within sixty (60) days of the effective date of the bill shall immediately cease all Level III surgical procedures until such time as application is made, fee paid and a site survey completed.

(C) A physician that is not performing Level III office-based surgeries as of the effective date of this bill shall not perform any such procedures until a form and payment is submitted and a site survey completed by the department;

(2) Authorized to initiate subsequent, unannounced site surveys during regular business hours as long as the physician continues to perform Level III surgeries but no more frequently than once every twelve (12) months; and

(3) Authorized to respond to any complaints made by patients or the public against a physician who performs Level III office-based surgery at the request of the office of investigations.

(e) The results of all site surveys shall be transmitted to the board which shall make a final determination authorizing the physician to perform Level III surgeries. Such information shall be shared on a routine basis with the board for licensing health care facilities.

(f) The results of all complaint investigations by department staff shall be transmitted to the board for resolution. However, all such information must at all times be maintained as confidential and not available to the public except to the extent the provisions of Section 63-1-117(b) apply.

(g) Any physician that desires to perform office-based surgery shall pay to the department a fee in the same amount as the annual licensure fee of an ambulatory surgical treatment center, as defined in Section 68-11-201(3).

(h) A physician who performs office-based surgery shall insure that claims data is reported on the appropriate form to the commissioner of health. The data shall be submitted through a third party approved by the department of health for the purpose of editing the data according to rules and regulations established by the commissioner. The physician shall be responsible for the costs associated with processing of the data by the approved vendors. The claims data shall be reported at least quarterly to the commissioner. No information shall be made available to the public by the commissioner that reasonably could be expected to reveal the identity of any patient. The claims data reported to the commissioner under this section are confidential and not available to the public until the commissioner processes and verifies such data. The commissioner shall prescribe conditions under which the processed and verified data are available to the public.

(i) Failure of a physician performing office-based surgery to abide by the provisions of this chapter or of Section 68-11-211 may be grounds for disciplinary action and/or termination of the rights of the physician to perform office-based surgery by the board of osteopathic examination.

(j) The board is authorized to promulgate public necessity rules that address any aspect of office-based surgery as deemed necessary.

SECTION 3. Tennessee Code Annotated, Section 68-11-211, is amended as follows:

(a) By deleting subdivision (c)(4) in its entirety and substituting the following definition: “(4) 'Facility' is any facility licensed under this part and any physician office where Level III surgery occurs.”

(b) By deleting the last sentence in subdivision (d)(1) in its entirety and substituting the following:

The provisions of this subsection (d) and of § 68-11-804(c)(23) shall not affect any of the provisions of Sections 63-6-219 or 63-9-114, or the protections provided by Sections 63-6-219 or 63-9-114.

(c) By adding the following sentence at the end of Section 68-11-211(d)(6):

Notwithstanding the provisions of the last sentence, the resolution of any disagreement between the department and the physician performing office-based surgery shall be made by the board of medical examiners or board of osteopathic examination, as applicable, in a contested case hearing.

SECTION 4. This act shall take effect July 1, 2007, the public welfare requiring it.